



26/6/86

भारत का राजपत्र

The Gazette of India

प्रधानमंत्री से प्रकाशित
PUBLISHED BY AUTHORITY

सं 14]

नई विली, रामियार, मई 17, 1986/वैशाख 27, 1908

NO 14[

NEW DELHI MAY 17, 1986/VAISAKHA 27, 1908

इस भाग से भिन्न पृष्ठ फ़ॉलो हैं। इससे कि यह अलग संख्याएँ के समांग रखा जा सके।
Separate pages are given to this Part in order that it may be used as a separate compilation.

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांघिकीय आदेश और अधिसूचनाएँ
Orders and Notifications issued by the Central Authorities (other than the Administration of Union Territories)

भारत निवाचित आयोग

आदेश

नई विली, 7 मई, 1986

मा. अ. 94.—निवाचित आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट पंजाब विधान सभा के निवाचित के लिए दो सांसद (3) में विनिर्दिष्ट निराकार-झेत्र से हुआ है, स्तम्भ (4) में उसके सामने, विनिर्दिष्ट निवाचित छड़ने वाला प्रत्येक अध्यर्थी, कोक प्रतिनिधित्व प्रदाता। 1981 तारीख वाले निराकार द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा उपदेशित अपने निवाचित अधिकारी का कोई भी लोकायत नाम के दर्द स्वीकृत रीति से प्राप्त किया दर्शित करने में असफल रहा है;

प्राप्त उक्त मध्यस्थियों ने सम्बन्ध सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण यथा स्पष्टीकरण नहीं दिया है या उसके द्वारा दिए गए व्यापारिकों पर, यदि कोई हो, विचार करने के पश्चात् निवाचित आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या स्थायीयत्व नहीं है;

पा. दर, निराकार अधिकारी उक्त अधिनियम का धारा 10-के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट अधिकारी को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य क्षेत्र की विधान सभा यथा विधान परिषद के सदस्य चुने जाने और होने के लिए इस भावेश की तारीख से तीन वर्ष की कालावधि के लिए निरहृत घोषित करता है।

सारणी

क्र.सं.	निवाचित का विवरण	संसदीय निवाचित-झेत्र की क्र.सं.	निवाचित लड़ने वाले अध्यर्थी का नाम व पता निरदृश्यता का कारण	
1	2	3	4	5
1.	पंजाब विधान सभा का साधारण निवाचित, 1985	69-खरड	बी मटराज, मुमुक्षु श्री शिव राम, मीम वाला चौक, खरड (पंजाब)	विधि द्वारा अपेक्षित रीति से दर्शित दर्शिल नहीं किया।

1	2	3	4	5
2.	पंजाब विधान सभा का सांसदरण विवरिति, 1985	51-दसूया	श्री अमिताला, गांव बाजा चाका, तह. दसूया, पंजाब।	निवाचित व्यवों का कोई भी लेखा दाखिल करने में असफल रहे।
3.	-बही-	11-सुजामपुर	श्री विश्वनाथ दास, गांव लीमिनी, डाकघर सुजामपुर, जिला गुरजासपुर, (पंजाब)।	-बही-
4.	-बही-	-बही-	श्री पृष्ठबीर सिंह, गांव व डाकघर मिरखल, तह. पठानकोट (पंजाब)।	-बही-
5.	-बही-	73-इकाला	श्री भगवान दास मित्तल, गांव बलबेहड़ा, जिला पटियाला (पंजाब)।	-बही-
6.	-बही-	7-गुरजासपुर	श्री बलरंत सिंह चौहान, 4-रेड कास विलिंग, गुरजासपुर (पंजाब)।	विधि द्वारा अपेक्षित रीति से भेजा दाखिल नहीं किया।
7.	-बही-	19-अमृतसर विधाय	श्री अगभोहन सिंह बेंवी, 8717-याती नं. 3, कोट बाबा बीप सिंह, अमृतसर (पंजाब)।	विधि द्वारा अपेक्षित रीति से भेजा दाखिल नहीं किया।
8.	-बही-	68-मोरिया	श्री टीका सिंह, सुपुत्र श्री रघुबीर सिंह, गांव लिजराबाद, तह. बरड़ (पंजाब)।	निवाचित व्यवों का कोई भी भेजा दाखिल नहीं किया।
9.	-बही-	55-चाथा	श्री बलदेव सिंह, गांव सिधधान कसानी, तह. जगरांव, जिला सुधियाना, (पंजाब)।	-बही-
10.	-बही-	28-आदमपुर	श्री अमीर चंद गांव व डाकघर भोणपुर, तह. जालंधर, (पंजाब)।	-बही-
11.	-बही-	-बही-	श्री फकीर चंद, गांव कोडियाना, तह. जालंधर, पंजाब।	-बही-
12.	-बही-	34-सोहिया	श्री सुरियो बुमार, पो. आ. होड, पाहकोट, तह. नकोदर, जिला जालंधर (पंजाब)	-बही-
13.	-बही-	32 जालंधर विधाय	श्री ओमिंदर सिंह, गांव सैनीवाल, तह. नकोदर, जालंधर (पंजाब)।	-बही-

1	2	3	4	5
14.	पंजाब विधान सभा का सांसदारण निर्वाचन, 1985	32-जालंधर दलिया	श्री लालचंद, डल्हू, जे. 63, वास्तीक मोहूला, बस्ती गुजारा, जालंधर (पंजाब)।	निर्वाचन विधायिका कोई भी लेखा वाचिल करने में असफल रहे।
15.	वही	35-नकोदर	श्री मुन्ज राज, पट्टी टवार, गांव पंकार, तह. नकोदर, जिला जालंधर, (पंजाब)।	-वही-

[म. 76 पंजाब-वि. स., 86 (3)]

आदेश से,
बलवंत सिंह, अवृ. सचिव
भारत नियन्त्रित आयोग

ELECTION COMMISSION OF INDIA

ORDER

New Delhi, the 7th April, 1986

O.N. 94.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the Punjab Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses or failed to lodge the account within the time and/or in the manner, as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made there under;

And whereas the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State/Union Territory for a period of 3 years from the date of this order;

TABLE

S. Particulars of election No.	S.No. and Name of constituency		Reason for disqualification	
1	2	3	4	5
1.	General Election to Punjab Legislative Assembly, 1985.	69—Kharar a.c.	Shri Natraj, S/o Shri Shiv Ram, Neem Wala Chowk, Kharar (Punjab).	Account not lodged in the manner required by law.
2.	do	51—Dasuya a.c.	Shri Abhinash, Village Baja Chak, Tehsil-Dasuya, Punjab.	Failed to lodge any account of election expenses.
3.	-do-	11—Sujanpur	Shri Bishamber Dass, Vill. Lamini, P.O. Sujanpur, District Gurdaspur, (Punjab)	-do-
4.	-do-	-do-	Shri Yudhbir Singh, Vill. P. O. Mirthal, Tehsil Pathankot, Punjab.	-do-
5.	-do-	73—Dakala	Shri Bhagwan Das Mittal, Village Balbehra, District Patiala, Punjab.	-do-
6.	-do-	7—Gurdaspur	Shri Balwant Singh Chohan, 4, Red Cross Bldg. Gurdaspur (Punjab)	Account not lodged in the manner required by law.
7.	-do-	19—Amritsar South	Shri Jagmohan Singh Bedi, 8717, Gali No. 3. Kot Baba Deep Singh Amritsar (Punjab).	-do-

1	2	3	4	5
8.	General Election to Punjab Legislative Assembly, 1985	68—Morinda	Shri Tika Singh, S/o Shri Raghbir Singh Village Khirabad, Tehsil Kharar (Punjab)	Failed to lodge any account of election expenses.
9.	-do-	55—Dakha	Shri Baldev Singh. Village Sidhwan Kalan, Tehsil Jagraon, District Ludhiana, (Punjab)	-do-
10.	-do-	28—Adampur	Shri Amir Chand, Vill. & P. O. Bhogpur. Teh. Jalandhar, Punjab.	-do-
11.	-do-	-do-	Shri Faqir Chand, Vill. Kodiana, Tehsil Jalandhar, Punjab.	-do-
12.	do	34—Lohian	Shri Surinder Kumar, Post Office Road, Shahkot, Tehsil Nakodar, Distt. Jalandhar (Punjab).	-do-
13.	-do-	32—Jalandhar South	Shri Joginder Singh, Village Sainiwal, Tehsil Nankodar, Jalandhar (Punjab)	-do-
14.	-do-	-do-	Shri Lal Chand, W.J. 63, Balmik Mohalla, Basti Guzan,	-do-
15.	-do-	35—Nakodar	Shri Mukh Raj, Patti Takhar, Village Shankar, Tehsil Nakodar, Distt. Jalandhar, Punjab.	-do-

[No. 76/PB-LA/86(3)]

By Order,
BALWANT SINGH, Under Secy
 Election Commission of India

IN THE HIGH COURT OF JUDICATURE ANDHRA
 PRADESH AT HYDERABAD

ORDINARY ORIGINAL CIVIL JURISDICTION

Friday the seventeenth day of January one thousand nine
 hundred and eighty six.

PRESENT :

THE HONOURABLE MR. JUSTICE UPENDRALAL
 WAGRAY

APPLICATION NO. 372 of 1985

ELECTION PETITION NO. 1 of 1984

BETWEEN

T. B. Dayal —Petitioner (Petitioners)
 AND

1. Puttapaga Radhakrishna, M.P.
2. Prof. C. Lakshmana, M.P.
3. Parvathaneni Upendra, M.P.
4. Yalla Sesibhushana Rao, M.P.
5. B. Satyanarayana Reddy, M.P.
6. T. Chandrasekhara Reddy, M.P.
7. T. Bala Goud, M.P.
8. M. Gangadham, Ex-M.L.C. Respondents
 —(Respondents)

नई विल्सी, 30 अप्रैल, 1986

पा. अ. 95.—1984 की निर्वाचन घर्जी सं. 1 में भाग्य
 प्रदेश उच्च न्यायालय, हैदराबाद, के तारीख 7 जनवरी, 1986/
 31 जनवरी, 1986 के नियम को लोक प्रतिनिधित्व घटितियम्, 1951
 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन भायोग इसके
 द्वारा प्रकाशित करता है।

[सं 82/बा०प्रा०—रा० सं/1/84]

आदेश से,
 सी. एस. रोज, सचिव,
 भारत निर्वाचन भायोग

New Delhi, the 30th April, 1986

O.N. 95.—In pursuance of section 106 of the Representative of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the judgement of the High Court of Judicature Andhra Pradesh at Hyderabad 7th January, 1986 dated 31st January, 1986 Election Petition No. 1 of 1984.

[No. 82/AP-CS/1/84]

By Order
 C. L. ROSE, Secy,
 Election Commission of India

Application under Or IX R. 9 of the C.P.C. that this High Court may be pleased to set aside the exparte dismissal order dt. 29-11-1985 and restore E.P. No. 184 to its original number.

This application coming on for orders upon reading the Judge's summons and the affidavit dt. 27-12-1985 and filed by Mr. T. D. Dayal (Petitioner and party-in-person) in support of this application and upon hearing the arguments of Mr. T. D. Dayal, Petitioner (Party-in-person) and of Mr. I. Koti Reddy, Advocate for Respondents, 1, 3, 4, 5, 28, Mr. M. B. Ramasarma, Advocate for R. 6 Mr. M Chandrasekhara Rao, Advocate for R2, Mr. V. Eswaraiah, Advocate for Respondent No. 7 It is ordered that the dismissal order dt. 29-11-1985 in E.P. No. 1 of 1984 be and hereby is set aside and restored to its original number.

Ed:-
J. KRISHNA SARMA, Dy. Registrar

**IN THE HIGH COURT OF JUDICATURE : ANDHRA PRADESH : AT HYDERABAD
(ORIGINAL JURISDICTION)**

Friay the thirty first day of January one thousand nine hundred and eighty six

PRESENT :

The Honourable justice : Upendralal wagray

Election Petition No. 1 of 1984

BETWEEN

T. Deen Dayal

Petitioner

AND

1. Punnapaga Radhakrishna, Member of Parliament	
2. Prof. C. Lakshmann,	-do-
3. Parvathaneni Upendra,	-do-
4. Yalla Sesi Bhushana Rao	-do-
5. B. Satyanarayana Reddy	-do-
6. T. Chandrasekhara Reddy	-do-
7. T. Bala Gowd,	Ex-Minister
8. M. Gangadharam M.L.C.	Respondents

Petition U/s. 81 of the Representation of the People Act, 1951 praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to (i) declare the election of the respondents 1 to 6 to the council of States on 29-3-1984 as void; and (ii) to award costs.

For the Petitioner Mr. T. Deen Dayal, Party-in-person

For the Respondents 1, 3 to 5 and 8 : Mr. I. Koti Reddy, Advocate

For the Respondent No. 2 : Mr. M. Chandrasekhara Rao, Advocate.

For the Respondent No. 6 : Mr. M. B. Rama Sarma, Advocate

For the Respondent No. 7 : Mr. V. Eswaraiah, Advocate. The court delivered the following:

JUDGMENT :

In this Election Petition filed under Section 81 of the Representation of the People Act, 1951 (hereinafter referred to as the Act) the election of respondents 1 to 6 held on 29-3-1984 to the six seats of the Council of States (Rajya Sabha) by the Members of the Andhra Pradesh Legislative Assembly is challenged. The petitioner was one of the contestants. In addition to respondents 1 to 6, two more candidates viz., one who had withdrawn his nomination, that is, respondent No. 8 and a candidate who had lost, that is, respondent No. 7 are impleaded as parties. The election of respondents 1 to 6 is sought to be declared void on the following grounds :

(a) On the date of filing of nomination papers (i.e. 19-8-1984) the 1st respondent was holding the post of a Member of the Andhra Pradesh State Public

Service Commission and his resignation was not accepted by the Governor. He was, therefore, disqualified under Article 102(1)(a) of the Constitution of India.

- (b) On the date of nomination, the 2nd respondent was holding the post of a Professor in Sociology, Osmania University and Director, Centre for population Studies and, therefore, disqualified under Article 102 (1)(a) of the Constitution of India.
- (c) With the consent of respondents 1 to 5 Sri N. T. Rama Rao, Chief Minister of Andhra Pradesh, exerted undue influence on the 8th respondent to withdraw from the contest promising him to get him nominated as a member of the Andhra Pradesh Legislative Council. This amounts to a corrupt practice under Section 123(1) of the Act and, therefore, the election is to be set aside.
- (d) With the consent of respondents 1 to 5 Sri N. T. Rama Rao, Chief Minister of Andhra Pradesh had exerted undue influence on the voters and threatened them with dire consequences if they failed to vote for respondents 1 to 5 and entrusted the work of overseeing the voting to Mr. B. Appa Rao IPS. This amounts to a corrupt practice under Section 123(2) of the Act and, therefore the election is to be set aside.
- (e) Several members of the State Legislative Assembly who formed the electoral college had become disqualified from being members of the Andhra Pradesh Legislative Assembly with effect from 4-7-1983 under Article 191(1)(e) of the Constitution of India. As they have participated in the election it has to be set aside.

Except the allegations extracted above, no further particulars of any corrupt practice are given, either in the petition or in the affidavit filed along with it.

All the 8 respondents have filed their written statement and denied the allegations made in the petition and requested for its dismissal.

After hearing the parties, the following three issues were framed on 28-12-1984.

1. Whether the 1st respondent was disqualified for seeking election to the council of State on 19-3-1984 for the reasons mentioned in the Election Petition ?
2. Whether the 2nd respondent was disqualified for seeking election to the council of State on 19-3-1984 for the reasons mentioned in the Election Petition ?
3. To what relief is the petitioner entitled ?

In the order framing the issues it was held that the question whether 40 members of the Assembly (who formed part of the electoral college) were disqualified on 4-7-1983 and hence ought not to have been permitted to cast their vote in the election for the council of States could not be gone into in this Election petition in view of Article 192 of the Constitution of India. Any disqualification of a Member of Assembly (who only from the electoral college) could only be decided by the Governor under Article 192, of the Constitution of India. That the determination of such disqualification is in the exclusive jurisdiction of the Governor has been decided by a Bench of this Court in a Writ petition filed by the petitioner in this Election Petition and reported in T. Deen Davalu Vs. Sri Bezawada Pani Reddy (AIR 1984 AP 162). Hence no issue was framed about this allegation. The allegation of corrupt practice in the two paragraphs which have been extracted above relate to undue influence by the Chief Minister with the consent of respondents 1 to 5. The allegation is vague and no particulars are given as required by Section 83 of the Act, regarding the names of the persons on whom undue influence was exercised and the date and place where such corrupt practice was committed. Any trial about such vague allegation would have led to a running enquiry not contemplated in the trial of an Election Petition, and this Court had declined to frame an issue, in respect of these two allegations also.

The petitioner later filed an application No. 54/1985 for framing these very issues as additional issues. This was dismissed by an order dated 15-3-1985. After several adjournments the petitioner has got himself examined as a witness and documents Exhibits A-1 to A-5 have been marked. This is the only evidence adduced in this case.

Issue No. 1.—Exhibits A-1 is the original letter dated 20-3-1984 given by the petitioner to the Returning Officer stating that respondent No. 1 was disqualified from contesting the election, for the reasons already given above. It contains an endorsement of the Returning Officer to the effect that it was rejected after hearing the parties. Ex. A1's is the notification contained in G.O. No. 175 GAD dated 16-3-1984 the relevant portion reads as follows :—

"Sri P. Radhakrishna, Member Andhra Pradesh Public Service Commission tendered resignation as Member of the Andhra Pradesh Public Service Commission with effect from 16th March, 1984."

Ex. A-4 is the letter of resignation dated 16-3-1984, written in the hand writing of respondent No. addressed to the Governor of A.P. Ex. A-5 is the letter dated 16-3-1984 from the Governor of Andhra Pradesh to the Chief Minister enclosing Ex. A-4. The originals of Exs. A-3 and A-5 have been summoned from the Government at the request of the petitioner, and with consent Xerox copies have been marked. The petitioner does not dispute the truth of these documents. His contention is that, unless the resignation tendered by respondent No. 1 was accepted by the Governor, he continued to be a member. According to him, there is no material to show that there was an acceptance of resignation by the Governor. He contends that the Governor by his letter Ex. A-5 merely forwarded the resignation letter to the Chief Minister for his advice because the Governor has to act, in accordance with the advice of the Council of Ministers. According to him the Governor could not only after the advice was received from the Chief Minister, as contemplated by Article 163 of the Constitution. He has also referred to Articles 316 and 317 of the Constitution and contended that a Member of the Public Service Commission cannot be removed, save as provided in Article 317 of the Constitution of India.

I am not able to accept the contention of the petitioner. Article 316 (2) of the Constitution of India reads as follows :

"316 (2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a state Commission or Joint Commission, the age of sixty-two years, whichever is earlier :

Provided that :—

- (a) a member of Public Service Commission may, by writing under his hand addressed in the case of the Union Commission or a Joint Commission, to the President and in the case of a State Commission to the Governor of the State, resign his office;
- (b) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of article 317."

The proviso to the said sub-article is clear. According to it, a Member of the Public Service Commission, may by writing, under his hand addressed to the Governor resign his office. There is no requirement for any authority to accept the said resignation. The only requirement is that the member concerned has to send the letter under his hand to the Governor, intimating that he is resigning his office. The documentary evidence in this case viz. Exs. A-3, A-4 and A-5 clearly establish that respondent No.1 had sent the resignation letter in hand to the Governor and the Governor had merely forwarded it to the Chief Minister and, based

upon it, the notification was issued. The record does not disclose that either the Governor or the Chief Minister contemplated taking any further action, regarding acceptance of resignation. In fact, no further action could have been taken. As the respondent No. 1 has resigned his office on 16-3-1984, as contemplated by the aforesaid provision of the Constitution of India, and the resignation was also notified on the same day, he ceased to be a member on that date. The last date for nomination was 19-3-1984 and the scrutiny was on 20-3-1984. The respondent No. 1 was not disqualified, at the relevant date from contesting the election under Article 102 (1) (a) of the Constitution. The issue No.1 is held against the petitioner.

Issue No.2. The petitioner has filed Ex. A-2, which is a letter dated 20-3-1984, addressed to the Returning Officer stating that respondent No. 2 was disqualified under Art. 102 (1) (a) of the Constitution of India. The returning Officer has endorsed on the same day. After hearing the parties that the objection is over-ruled. The petitioner, when asked in the cross-examination, has not disputed that the centre for population Studies is a voluntary organisation and respondent No. 2 as its Director does not receive any remuneration. But, the petitioner contends that as respondent No. 2 was holding the post of Professor in Sociology, Osmania University, he is disqualified under Art. 102 (1) (a) of the Constitution. Is the post of a Professor in the Osmania University an office of profit under the Government of India or the State Government? The Osmania University is an autonomous Statutory Body, constituted under the Osmania University Act (AP Act IX of 1959). Section 38 of the University Act provides that the salaries of the teaching Staff (which include professions) has to be paid out of the University funds. The appointment of the teaching Staff including a professor is to be done by the authorities of the University, in accordance with its Act. Neither the State Government nor the Central Government have any control over the teaching staff in the University. It cannot be said that respondent No. 2 holds an office under the State Government or is disqualified under Article 102 (1) (a) of the constitution. The Supreme Court of India, in its recent judgement reported in Ashok Kumar Vs. Ajay Biswas (1) AIR 1985 SC 211 laid down the test for determining the question whether a person holds an office of profit under the Government for purposes of this Art. Applying the said tests, the professor of an University cannot be said to be disqualified for this reason. The issue No. 2 is decided against the petitioner.

Issue No. 3.—In view of the findings under Issues 1 and 2, the petition is liable to be dismissed. For the purpose of awarding costs, the following circumstances have to be kept in view. The petitioner is not one of the electors from the Assembly Constituency for this election. He was one of the contestants and he has stated in his evidence that he did not get even a single vote in the said election. The election of the six respondents to the vacancies in Rajya Sabha from the electoral college of members of Andhra Pradesh Assembly has been challenged in this petition, apparently with vague and casual allegations. I do not see any reason to depart from the rule that costs must follow the result. The election petition is, therefore, dismissed with costs of respondents 1 to 6. The respondents 7 and 8 shall bear their own costs. The costs payable by the petitioner are quantified at Rs. 2,000/- At the trial the challenge was to the election of respondents 1 and 2, but all the six elected members had to contest the case as the result could have affected them all. I, therefore consider it appropriate that residents 1 and 2 shall get Rs. 500/- each as costs and respondents 3 to 6 shall get Rs. 250 each as costs.

T. G. KRISHNAMACHARI, Addl Deputy Registrar

Dated : 31-1-1986

JUDGMENT :

E. P. No. 1 of 1984.